



## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[Docket No. FWS–R8–ES–2021–0094; FF08ESMF00–FXES11140800000–212]

### DifWind VII & IX Reclamation Project, Alameda County, California; Draft Categorical Exclusion and Draft Habitat Conservation Plan

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability of permit application; request for comment

**SUMMARY:** We, the U.S. Fish and Wildlife Service, announce the receipt of an application from DifWind Farms Limited VII and DifWind Farms Limited IX (collectively, the applicants) for a 6-year incidental take permit under the Endangered Species Act (ESA), along with the applicants' draft habitat conservation plan. We also announce the availability of the associated draft National Environmental Policy Act categorical exclusion screening form. The applicants have applied for an incidental take permit under the ESA for the DifWind VII & IX Reclamation Project in Alameda County, California. The permit would authorize the take of two species incidental to the reclamation of a decommissioned commercial wind energy project. We invite the public and local, State, Tribal, and Federal agencies to comment on the application and related documents. Before issuing the requested permit, we will take into consideration any information that we receive during the public comment period.

**DATES:** We must receive your written comments on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].**

**ADDRESSES: *Obtaining Documents:*** The draft categorical exclusion screening form (CatEx), draft habitat conservation plan (HCP), and any comments and other materials that we receive are available for public inspection at <http://www.regulations.gov> in Docket No. FWS–R8–ES–2021–0094.

***Submitting Comments:*** To submit comments, please use one of the following methods, and note that your information requests or comments are in reference to the draft CatEx, draft HCP, or both.

- *Internet:* Submit comments at [http:// www.regulations.gov](http://www.regulations.gov) under Docket No. FWS–R8–ES–2021–0094.
- *U.S. Mail:* Public Comments Processing, Attn: Docket No. FWS–R8–ES–2021–0094; U.S. Fish and Wildlife Service Headquarters, MS: PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

For more information, see **Public Comments** and **Public Availability of Comments**.

**FOR FURTHER INFORMATION CONTACT:** Vincent Griego, Fish and Wildlife Biologist, or Ryan Olah, Chief, Coast Bay Division, Fish and Wildlife Service, Sacramento Fish and Wildlife Office, by phone at 916–414–6600 or via the Federal Relay Service at 800–877–8339.

**SUPPLEMENTARY INFORMATION:** We, the U.S. Fish and Wildlife Service (Service), announce the receipt of an application from DifWind Farms Limited VII, and

DifWind Farms Limited IX (collectively, the applicants), for a 6-year incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), along with the applicants' draft habitat conservation plan. We also announce the availability of the associated draft National Environmental Policy Act categorical exclusion screening form (NEPA; 42 U.S.C. 4321 *et seq.*). The applicants have applied for an incidental take permit under the ESA for the DifWind VII & IX Reclamation Project in Alameda County, California. The permit would authorize the take of two species incidental to the reclamation of a decommissioned commercial wind energy project. We invite the public and local, State, Tribal, and Federal agencies to comment on the application and related documents. Before issuing the requested permit, we will take into consideration any information that we receive during the public comment period.

An ITP application requires the preparation of an HCP with measures to avoid, minimize, and mitigate the impacts of incidental take to the maximum extent practicable. The applicants prepared and submitted for Service review their Draft DifWind VII & IX Reclamation Project Habitat Conservation Plan (HCP) pursuant to section 10(a)(1)(B) of the ESA. The Service then prepared a draft categorical exclusion screening form consistent with the National Environmental Policy Act of 1969, as amended (NEPA; 42 U.S.C. 4321 *et seq.*), and its implementing regulations in the Code of Federal Regulations (CFR) at 40 CFR 1501.4, and now is making it available in accordance with provisions within 40 CFR 1506.6. The purpose of the screening form is to confirm that the agency action is within a category of actions previously determined, pursuant to agency NEPA procedures, not to normally have significant effects on the natural and human environment, and thus does not require further NEPA evaluation, and that there are no extraordinary circumstances that indicate that an otherwise-excluded action may warrant

further NEPA evaluation.

## **Background**

Section 9 of the ESA (16 U.S.C. 1531–1544 *et seq.*) and Federal regulations (50 CFR 17) prohibit the taking of fish and wildlife species listed as endangered or threatened under section 4 of the ESA. Regulations governing allowable exceptions to prohibited take of endangered and threatened species via permits are at 50 CFR 17.22 and 17.32. For more about the Federal habitat conservation plan program, go to <http://www.fws.gov/endangered/esa-library/pdf/hcp.pdf>.

## **National Environmental Policy Act Compliance**

The proposed permit issuance triggers the need for compliance with NEPA. The draft CatEx was prepared to analyze the impacts of issuing an ITP based on the draft HCP and to inform the public of the proposed action, any alternatives, and associated impacts, and to disclose any irreversible commitments of resources. The draft CatEx further confirms if an action is within a category of categorically excluded activities indicating further NEPA evaluation is not necessary.

## ***Proposed Action Alternative***

Under the proposed action alternative, the Service would issue an ITP to the applicants for a period of 6 years for certain covered activities (described below). The applicants have requested an ITP for two covered species (described below), which are listed as threatened under the ESA.

## ***Covered Activities***

The proposed ESA section 10 ITP would allow take of two covered species from covered activities in the proposed HCP area. The applicants are requesting incidental take authorization to complete the decommissioning and removal of a wind energy project originally installed in the 1980s and 1990s. The applicants have completed non-ground-disturbing work, including the removal of wind turbine blades, nacelles, turbine towers, transformers, meteorological masts, and other minor aboveground facilities. Under the HCP, the applicants would complete the decommissioning and removal of approximately 14 miscellaneous concrete pads, 17 junction boxes, 308 turbine foundations, 41 concrete pad-mount transformer pads, and would restore approximately 14.7 miles of access roads. The applicants seeks a 6-year permit to match the projected time necessary to complete the activities associated with this proposed decommissioning and reclamation project, including ground-disturbing activities, and remedial actions, if necessary, to ensure restoration of the project site.

The applicants propose actions to avoid, minimize, and mitigate the effects to the Covered Species associated with the Covered Activities through the implementation of the HCP. The proposed mitigation measures in the HCP closely follow the avoidance and minimization measures outlined in the East Alameda Conservation Strategy (EACCS). The measures generally require preconstruction surveys; avoidance and monitoring during construction; and best management practices for restoration of Covered Species habitat.

#### *Covered Species*

The California tiger salamander (*Ambystoma californiense*) (central California distinct population segment), and the California red-legged frog (*Rana draytonii*), both federally listed as threatened, are proposed to be included as covered species in the proposed HCP.

#### **Alternatives**

In addition to the proposed action alternative in the applicant's HCP, as required by the ESA, the HCP considers several alternatives to such action's potential taking: (1) The No-Take Alternative; (2) the Reduced Take Alternative, and (3) an Other Alternative.

#### ***No-Action Alternative***

Under the no-action alternative, the Service would not issue an ITP to the applicants, and the reclamation would not be completed. The no-action alternative is not feasible, based on the purpose and need of the project. The existing wind energy project has been partially decommissioned, but the applicants are responsible for comprehensive decommissioning and reclamation activities. Ground disturbance during the final phases of decommissioning/reclamation activities is unavoidable, along with plausible incidental take of covered species. For these reasons, the no-action alternative has been rejected.

#### ***Reduced Take Alternative***

Under the reduced take alternative, the applicants considered only removing turbine foundations that were located further away from aquatic habitat for the covered species. The Service would issue a permit, and the applicants would implement the proposed mitigation measures. While this reduced take alternative would reduce the amount of California tiger salamander and California red-legged frog habitat affected, it was determined to be infeasible because the applicants have previous agreements with the landowner to remove all project components during decommissioning. The applicants would not be able to meet their obligations with landowners under this alternative, so the reduced take alternative was rejected.

#### ***Other Alternative***

The applicants also considered restoring fewer miles of roads as an alternative. The Service would issue a permit, and the applicants would implement the proposed mitigation measures. While this other alternative would reduce by a very small amount

the amount of California tiger salamander and California red-legged frog habitat initially affected, the long-term value of rehabilitating areas for future habitat would be lost. Additionally, it was determined to be generally infeasible because the applicants have previous agreements with the landowner to remove all project components during decommissioning. So for these reasons, the reduced take alternative was rejected.

### **Public Comments**

We request data, comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party on this notice, the draft CatEx, and the draft HCP. We particularly seek comments on the following:

- (1) Biological information concerning the species;
- (2) Relevant data concerning the species;
- (3) Additional information concerning the range, distribution, population size, and population trends of the species;
- (4) Current or planned activities in the subject area and their possible impacts on the species; and
- (5) The presence of archeological sites, buildings and structures, historic events, sacred and traditional areas, and other historic preservation concerns, which are required to be considered in project planning by the National Historic Preservation Act; and
- (6) Any other environmental issues that should be considered with regard to the proposed development and permit action.

### **Public Availability of Comments**

Before including your address, phone number, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—might be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

### **Next Steps**

Issuance of an ITP is a Federal proposed action subject to compliance with NEPA and section 7 of the ESA. We will evaluate the application, associated documents, and any public comments we receive to determine whether the application meets the requirements of section 10(a) of the ESA. If we determine that those requirements are met, we will conduct an intra-Service consultation under section 7 of the ESA for the Federal action for the potential issuance of an ITP. If the intra-Service consultation confirms that issuance of the ITP will not jeopardize the continued existence of any endangered or threatened species, or destroy or adversely modify critical habitat, we will issue a permit to the applicant for the incidental take of the California tiger salamander and California red-legged frog from the implementation of the covered activities described in the draft HCP. We will make the final permit decision no sooner than 30 days after publication of this notice in the **Federal Register**.

### **Authority**

We publish this notice in compliance with section 10(c) of the Endangered Species Act (16 U.S.C. 1531–1544 *et seq.*) and its implementing regulations at 40 CFR 17.22 and 17.32; and in furtherance of objectives under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321–4347 *et seq.*), and its implementing regulations at 40 CFR 1500–1508.



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